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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 vs.

14 ARCHES & HALOS, LLC, BEAUTY
PARTNERS, LLC, TARGET
CORPORATION,

Defendants.

Case No.: **21CV002133**

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

15 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
16 of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
20 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
21 “[n]o person in the course of doing business shall knowingly and intentionally expose any
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
23 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People’s right to be informed of the health
26 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in Arches & Halos
27 brow mousse (the “Products”) distributed, offered for sale and/or sold in California by defendants
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1 Arches & Halos, LLC (“Arches & Halos”), Beauty Partners, LLC (“Beauty Partners”) and Target
2 Corporation (“Target”) (collectively, “Defendants”) in California.

3 3. DEA is a harmful chemical known to the State of California to cause cancer. On
4 June 22, 2012, the State of California listed DEA as a chemical known to the State to cause cancer
5 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.
6 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
8 within California or sell products therein to comply with Proposition 65 regulations. Included in
9 such regulations is the requirement that businesses must label any product containing a Proposition
10 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
11 exposing any person to any such listed chemical.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
17 25249.7.

18 6. Plaintiff alleges that Defendants distribute, sell and/or offer for sale in California,
19 without a requisite exposure warning, Arches & Halos brow mousse (the “Products”) that expose
20 persons to DEA when used for its intended purpose.

21 7. Defendants’ failure to warn consumers and other individuals in California of the
22 health hazards associated with exposure to DEA in conjunction with the sale and/or distribution
23 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
24 penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendants to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

4 **PARTIES**

5 11. Plaintiff is a citizen of the State of California acting in the interest of the general
6 public to promote awareness of exposures to toxic chemicals in products sold in California and to
7 improve human health by reducing hazardous substances contained in such items. She brings this
8 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

9 12. Defendant Arches & Halos, through its business, effectively imports, distributes,
10 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
11 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
12 Plaintiff alleges that defendant Arches & Halos is a “person” in the course of doing business within
13 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 13. Defendant Beauty Partners, through its business, effectively imports, distributes,
15 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
16 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
17 Plaintiff alleges that defendant Arches & Halos is a “person” in the course of doing business within
18 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

19 14. Defendant Target, through its business, effectively imports, distributes, sells, and/or
20 offers the Products for sale or use in the State of California, or it implies by its conduct that it
21 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
22 Plaintiff alleges that defendant Target is a “person” in the course of doing business within the
23 meaning of Health & Safety Code sections 25249.6 and 25249.11.

24 **VENUE AND JURISDICTION**

25 15. Venue is proper in the County of Alameda because one or more of the instances of
26 wrongful conduct occurred and continues to occur in this county and/or because Defendants
27 conducted, and continue to conduct, business in the County of Alameda with respect to the
28 Products.

1 summary, the DEA was listed under Proposition 65 as a chemical known to the State to cause
2 cancer.

3 24. The consumer exposures that are the subject of this Complaint result from through
4 dermal absorption. Exposure to consumers includes when handling the Products, DEA comes into
5 contact with the fingertips and is then absorbed through the skin. Additionally, dermal absorption
6 of DEA can occur through direct skin contact when the Products are applied to the user's face.
7 Finally, some amount of exposure through ingestion can occur by touching the Products with
8 subsequent touching of the user's hand to mouth, through hand to food to mouth contact, or through
9 hand to cigarette to mouth contact.

10 25. Defendants have manufactured, processed, marketed, distributed, offered to sell
11 and/or sold the Products in California since at least September 17, 2020. The Products continue to
12 be distributed and sold in California without the requisite warning information.

13 26. At all times relevant to this action, Defendants have knowingly and intentionally
14 exposed users and/or consumers of the Products to DEA without first giving a clear and reasonable
15 exposure warning to such individuals.

16 27. As a proximate result of acts by Defendants, each as a person in the course of doing
17 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
18 California, including in Alameda County, have been exposed to DEA without a clear and
19 reasonable warning on the Products. The individuals subject to the violative exposures include
20 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
21 the Products.

22 **SATISFACTION OF NOTICE REQUIREMENTS**

23 28. On October 29, 2020, Plaintiff gave notice of alleged violation of Health and Safety
24 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
25 DEA from use of the Products without proper warning, subject to a private action to Defendants
26 and to the California Attorney General's office and the offices of the County District attorneys and
27 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
28 violations allegedly occurred.

1 the skin. Additionally, dermal absorption of DEA can occur through direct skin contact when the
2 Products are applied to the user's face. Finally, some amount of exposure through ingestion can
3 occur by touching the Products with subsequent touching of the user's hand to mouth, through
4 hand to food to mouth contact, or through hand to cigarette to mouth contact.

5 38. Plaintiff, based on her best information and belief, avers that such exposures will
6 continue every day until clear and reasonable warnings are provided to purchasers and users or
7 until this known toxic chemical is removed from the Products.

8 39. Defendants have knowledge that the normal and reasonably foreseeable use of the
9 Products exposes individuals to DEA, and Defendants intend that exposures to DEA will occur by
10 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
11 Products to consumers in California

12 40. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
13 Complaint.

14 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
15 described acts, each Defendant is liable for a maximum civil penalty of \$2,500 per day per
16 violation.

17 42. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
18 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
3 relief:

4 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
5 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

7 B. That the court preliminarily and permanently enjoin Defendants mandating
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the
10 amount of \$50,000.00.

11 D. That the court grant any further relief as may be just and proper.

12 Dated: October 28, 2021

BRODSKY & SMITH

13 By:  _____

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